



14 DEC 2007

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SAN JOSE CA 95164-0640

In re Application of :  
RIVERA et al. :  
Application No.: 10/580,453 : DECISION ON  
PCT No.: PCT/FR04/506027 :  
Int. Filing: 19 November 2004 : PETITION UNDER  
Priority Date: 27 November 2003 :  
Attorney Docket No.: 034299-000698 : 37 CFR 1.181  
For: IN VIVO DIAGNOSTIC AND THERAPY :  
MICRO-DEVICE :

This is a decision on applicants' "PETITION TO ACKNOWLEDGE ORIGINAL 371 APPLICATION FILING DATE AS OFFICIAL FILING DATE" pursuant to 37 CFR 1.181 filed in the United States Patent and Trademark Office (USPTO) on 29 October 2007. No petition fee is required.

### **BACKGROUND**

On 23 May 2006, applicants filed a Transmittal Letter to the United States Designated/Elected Office (DO/EO/US) Concerning a Filing Under 35 U.S.C. 371 (Form PTO 1390) along with, *inter alia*, the basic national fee.

On 21 February 2007, a Notification of Missing Requirements (Form PCT/DO/EO/905) was mailed to applicants indicating that an oath or declaration, in compliance with 37 CFR 1.497(a) & (b), and the surcharge for the filing the oath or declaration after the thirty month period, was required.

On 02 April 2007, in response to the Notification of Missing Requirements, applicant provided a copy of the declaration and the USPTO date-stamped itemized postcard receipt.

On 21 August 2007, a Notification of Acceptance was issued indicating that the Date of Receipt of the 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) requirements and the date of completion of all 35 U.S.C. 371 requirements was 02 April 2007.

On 29 October 2007, applicant filed the instant petition to correct the 35 U.S.C. 371(c) date, to vacate the Notification of Acceptance and to issue a corrected Notification of Acceptance. Applicant included a copy of the declaration and an itemized USPTO date-stamped postcard indicating that a declaration and power of attorney were filed on 23 May 2006.

### **DISCUSSION**

The original declaration filed on 23 May 2006 is not located in the application file.

As stated in section 503 of the Manual of Patent Examining Procedure (Rev. 2, May 2004)(MPEP):

A postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.

A review of the USPTO date-stamped, itemized postcard receipt indicates that the declaration and power of attorney were deposited with the USPTO on 23 May 2006.

The evidence submitted is sufficient to establish that a declaration for this application was received in the USPTO on 23 May 2006. The communication filed 02 April 2007 includes a copy of the executed declaration. Accordingly, it is appropriate to accept the copy of the declaration as a replacement for the missing original declaration with a deposit date of 23 May 2006. The evidence submitted by applicant, the postcard receipt date stamped by the USPTO, is sufficient to overcome the *prima facie* evidence of the application file itself.

↪ A review of the declaration reveals that the declaration identifies the inventors, and states the citizenship and mailing address of the inventors. Thus, the declaration is acceptable and the requirements of 37 CFR 1.497(a) and (b) are met.

The Notification of Missing Requirements mailed on 21 February 2007 and the Notification of Acceptance mailed on 21 August 2007 are hereby **VACATED**. A new corrected Notification of Acceptance will be issued indicating that the Date of Receipt of the 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) requirements was 23 May 2006.

### **CONCLUSION**

The petition under 37 CFR 1.181 is **GRANTED**.

The copy of the declaration originally submitted on 23 May 2006 and resubmitted on 02

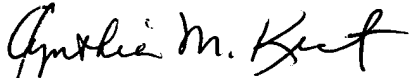
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April 2007 is acceptable and meets the requirements of 37 CFR 1.497.

The Notification of Missing Requirements mailed on 21 February 2007 and the Notification of Acceptance mailed on 21 August 2007 are **VACATED**.

The application will be forwarded to United States Designated/Elected Office for further processing including issuance of a corrected Notification of Acceptance. The 35 U.S.C. 371(c)(1), (2) and (4) date is **23 May 2006**.



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